

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re J.T., a Person Coming Under the
Juvenile Court Law.

B213080
(Los Angeles County
Super. Ct. No. CK74524)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.K.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Terry Troung, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Anna L. Ollinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., Los Angeles County Counsel, James M. Owens, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel for Plaintiff and Respondent.

I. INTRODUCTION

The presumed father, S.K., appeals from a December 19, 2008 jurisdiction and disposition order entered in the juvenile court pursuant to Welfare and Institutions Code section 300. (All further statutory references are to the Welfare and Institutions Code.) We affirm the order.

II. BACKGROUND

A. September 2008

The Department of Children and Family Services (the department) filed a section 300 petition and detention and addendum reports on September 8, 2008. On September 3, 2008, the nine-month-old child was detained from his parents in Utah. The child was placed locally with a paternal aunt and uncle, K.S. and C.S. Another paternal aunt, L.K., had contacted the parents in April and subsequently offered to temporarily care for the child and a half-sibling. L.K. reported the parents had a history of mental illness, depression, anxiety, and substance abuse. The mother had been molested by her father as a child and had a history of depression and attempted suicide. Three of the mother's siblings, who had also been molested by their father, had committed suicide. L.K. further stated: the parents had met at an Alcoholics Anonymous meeting eight years earlier; the father also had a history of depression and had undergone electroconvulsive therapy; the parents were financially unable to provide daycare; and the child had been neglected. The paternal aunts had visited the family in Utah in April 2008. They found no food or diapers in the house.

The child had first come to California to stay with his paternal aunts in June 2008. The paternal aunt, L.K., said that when the child first arrived, he was listless and had circles under his eyes. One month later, in July 2008, the parents came to California to

retrieve the child and a half-sibling. At that time the father: “seemed medicated”; behaved irrationally; and was carrying a large quantity of medication—anti-depressants, pain killers, and sleep aids. L.K. described the father as “a ‘hot mess, really rough and weird’” and sweating profusely. Some of the prescription medications had been filled only two days earlier, but the containers were already empty. The father said the medication was for teeth problems. While at the beach, the mother buried all of the father’s pills in the sand. According to L.K., the father flew into a rage.

The parents took the child back to Utah with them. The mother and the children stayed with maternal relatives for a few days because of the father’s “erratic” behavior. When L.K. did not hear from the father, she called for an ambulance. The father was hospitalized, “detoxed,” and released within 24 hours.

The child returned to California. The paternal aunt, L.K., said that when she picked the minor up at the airport, “[H]e looked stressed out, his eyes were wide and they were going back and forth.” L.K. said: the father did not have a job; the parents might file for bankruptcy; and the parents had not provided any financial assistance while the child was in his paternal aunts’ care. Dr. Michelle Finkle at Little Company of Mary Hospital noted the youngster was possibly a failure to thrive child.

Shelsea Wenell, a department social worker, spoke with the mother by telephone on August 29, 2008. The mother related that she had been treated for depression since she was 12 years old. The mother was currently treated by a therapist weekly and a psychiatrist monthly. Further, the child was staying with his aunts in California because the parents were in the process of moving and they needed help. Ms. Wenell spoke with the father by telephone on September 3, 2008. The father said the child was not abused or neglected he was being seen by “an excellent” doctor. The father reported that he had undergone therapy for nine years. The father also attended Alcoholics Anonymous and had a sponsor. The father admitted he had “had a ‘slip on pain pills’” but that was behind him. According to the father, the child had been sent to temporarily reside with the paternal aunts. This occurred because the father was undergoing electroconvulsive therapy.

The father's therapist, T.S., a licensed clinical social worker, had been providing therapy for about eight years. The therapist reported the father: had been diagnosed with "major depressive disorder and anxiety"; was currently taking psychotropic medication; and had relapsed on prescription medication. But, the therapist stated, the father was not currently abusing pain medication.

Department social worker Oanh Nguyen spoke with the father by telephone on September 5, 2008. The father stated he planned to attend the detention hearing. The father admitted: the parents had relapsed for a two-week period; the mother also had been abusing prescription drugs; and they both had a history of alcohol abuse. Ms. Nguyen also spoke with the mother on September 5, 2008. The mother said she had been diagnosed with depression and had been taking psychotropic medication. The mother had been seeing a psychiatrist for two years.

The matter was called for a hearing on September 8, 2008. The parents were not present, but were represented by counsel. The juvenile court found a prima facie case for detaining the child under section 300, subdivisions (a), (b), and (g). The juvenile court made a temporary emergency jurisdictional finding pending a determination whether the parents would object to jurisdiction. The parents were granted monitored visitation. On September 16, 2008, the parents' counsel objected to the court's exercise of jurisdiction. The juvenile court stated, "I will be calling the juvenile court judge in Salt Lake City, requesting that they take jurisdiction in this case." All counsel stipulated the Salt Lake City juvenile court could be provided with all of the documents on file in this case.

The department filed a September 29, 2008 jurisdiction and disposition report. The mother had been interviewed by telephone. She asserted the father: had been compliant with the treatment prescribed by T.S., his therapist; had undergone electroconvulsive therapy "to take better care of [their son]"; and had been clean and sober since his "last" relapse. The father, also interviewed by telephone, stated: he had never failed to take his prescribed medication; he took medication for anxiety and depression on a daily basis; and was now "perfectly able" to care for the minor, who was absolutely not at risk. But the social worker reported the father had been unable to

provide any care while he was undergoing electroconvulsive treatments. The father had stated: “I was unable to care for [the child] for a period of time while I was receiving . . . Electroconvulsive Therapy . . . treatment. It was recommended by my doctor that someone should watch over the child because the treatment would last for almost 4 weeks and that’s why I brought [the child] to my sisters.” The father said the child was the result of a planned pregnancy; the parents had consulted health care professionals before they decided to get pregnant.

The mother, father, and paternal aunts all reported the father had experienced a two-week relapse, abusing pain medication prescribed after an impacted molar was pulled, but that he was currently not abusing narcotics. K.S., one of the parental aunts with whom the child was residing, stated: ““It’s not true that [my brother has been] unable to care for the child[.] [D]uring the month of June they gave us the child while my brother sought treatment for depression. He went through treatment and visits with the psychiatrist. He’s currently taking his meds. He’s currently clean and they moved into a new apartment and he’s seeking employment. I haven’t noticed what I noticed in June. Back in June he was really unable to think clear[ly], he was foggy and tired a lot. He had a conversation with my sister and the doctor decided to have him undergo electric shock treatment because his medication was not producing results. My sister in law works full time and she was in no capacity of taking time out to care for [the child] The treatments were intense and [the father] was unable to care for [the infant and his half-sister] and they asked us to care for the children during his treatment, which would last 4 to 6 weeks. He completed his treatment in 4 weeks.[] [¶] []I don’t think that the child is in danger because my brother is much better.”” Another paternal aunt, L.K., similarly concluded: ““No I don’t think that the baby is in danger. I’m more confident now that they’ll be able to care for him than when it all happened. He’s back in touch with his sponsor and back in touch with his therapist. He has a good safety net. I know my brother and if he says that he’s alright then he’s fine.””

The father reported: he was not currently abusing drugs or alcohol; he had not used alcohol for eight years; he was an active member of Alcoholics Anonymous,

attending meetings nearly every day; he had abused pain killers for a two-week period, but he had stopped; he had so informed his medical care providers and but for the electroconvulsive therapy and consequent short term memory loss, he would not have abused pain killers. A Utah social worker reported: she had visited the parents' home on September 17, 2008; the parents had just moved in; and she did not observe any problems in the home.

The mother's therapist was the medical director of an adult behavioral clinic at a university. The therapist submitted a September 24, 2008 letter on the mother's behalf which states: "[The mother] . . . is a patient under my care in the University . . . Hospitals and Clinics system. She initially presented to the clinic in [September 2006] and is being treated for major depressive disorder. This letter is to address a few concerns raised by the CPS in the state of California. [¶] To the best of my knowledge, [the mother] has been fully compliant with my treatment recommendations, including taking medications. She has been a proactive patient and she has engaged in treatment. [¶] [The mother] currently denies suicidal ideation. She is not currently a danger to herself or anyone else, including her children. [The mother] cares deeply about her children and their well-being is her priority. To her credit, when she realized her depression was worsening surrounding a relapse on substances, [the mother] addressed the problem by arranging good care for her children. [The mother]'s illness has been improving and I anticipate she will be able to provide excellent care for her children in the future. [¶] [The mother] did briefly relapse on substances in early July of 2008. This was her first relapse since coming to my clinic in September of 2006. She recognized the problem, told me about it, and tapered off a potentially addictive medication which she had been prescribed. She volunteered to attend a recovery program, though this ended up being impossible for logistical reasons. She instead has been attending daily [Alcoholics Anonymous] meetings, and her sobriety is a priority in her life. To the best of my knowledge, she has been sober since mid-July 2008 and she continues to maintain sobriety. She has volunteered to take drug tests if deemed necessary. If she continues with her recovery plan (which includes attending [Alcoholics Anonymous], continuing medications and

psychiatric visits), her prognosis of maintaining sobriety is excellent. [¶] [The mother] has suffered from depressive illness for years and I would say her condition is chronic. Her condition will likely wax and wane in the future. However, despite her condition, she has always been an attentive mother to her children and she has been able to maintain a full-time job. When her condition was at its worst, she recognized her difficulty and made arrangements for her children. She is engaged in treatment, she has shown recent improvement and I feel that her prognosis for being able to adequately care for her children again is excellent.”

The mother had executed notarized documents authorizing the paternal aunts to care for her children. One document was notarized on August 26, 2008, and authorized the paternal aunts to obtain medical care for the child while he was in their care. The document expressly stated, “This authorization is applicable from July 23, 2008 through September 8, 2008.” A second document was notarized on June 11, 2008, and authorized L.K. to transport the children to her home in California “for a period of six weeks” and to make emergency medical decision for them.

The matter was before the juvenile court for a review hearing on September 29, 2008. The parents were not present. The juvenile court was still waiting for word from the juvenile court in Utah. The matter was continued to October 29, 2008.

B. October 2008

On October 1, 2008, a medical director of a family health center at a university wrote: “I saw [the father] on [August 15, 2008] for recurrent major depression. He is currently under my medical care and [I] prescribed medications to treat his depression. He has been compliant with the prescribed medications and not abusing any medications. To the best of my knowledge he has been alcohol abstinent for the past 8 years and participating in Alcoholics Anonymous.”

In a letter dated October 24, 2008, the social worker who treated the father wrote: “I have been [the father’s] therapist for the past eight years. When I first met [him], he

was an active alcoholic. He decided on his own initiative (and my support) to become involved in [Alcoholics Anonymous] within a few months of our first session, and [he] quickly became very actively involved in the Program. He found a sponsor, with whom he worked the 12 Steps in depth over a long period of time. When [the father] told me in July 2008 that he had relapsed, I was very surprised because recovery had become a way of life to [him]. Once [he] faced his relapse (within a matter of days), he immediately got back into recovery and is now working the 12 Steps again with the same sponsor. [¶] I am writing this letter on [the father's] behalf because I believe him to be a man of integrity and somebody who identifies himself with the sober community in every way. I also believe that [he] is a very caring father who early-on bonded fully with his son . . . and who is now doing everything he can to accommodate [child protective services] in order to re-gain custody of his son. I have had the opportunity to observe both [the father] and his wife interact with [the child], and feel very comfortable with recommending that he and his wife re-gain custody of their son as soon as possible so that the bonding can continue within the family. I have no reason to believe relapse will occur in the future.”

On October 29, 2008, department investigator Victor Portillo advised the juvenile court as follows: “[O]n [October 23, 2008], . . . Child Protective Services [in the parents’ home state] refused to open up a referral or case on this matter. Child Abuse Hotline Supervisor [T.R.] stated that since the child was residing in California at the time of detention, then California was the responsible state to handle the matter. Further, Mr. R[.] stated that even if they opened up an investigation there was no guarantee that their court would take jurisdiction of the matter. [¶] The Court is further referred to the attached letters dated [October 10, 2008] and [October 24, 2008], as to father. The first letter written by Dr. [R.B.] states that father is under Dr. [B.]’s medical care for his treatment of depression. Dr. B[.] further wrote that father ‘has been compliant with the prescribed medication and not abusing any medications’; however, this statement is inaccurate and concerning. [Sic] Father has admitted to abusing his pain pill[s] for ‘a period of two weeks.’ It’s alarming that either father has failed to report his abuse to his

treating doctor or that Dr. B[.] has disregarded father's relapse as insignificant. Additionally, [T.S.], [licensed clinical social worker], has reported in her letter that father is currently working the 12 Steps and that she 'has no reason to believe relapse will occur in the future.' However, it is clear the father did relapsed [*sic*] and that [neither] mother nor father have provided any substance abuse test result[s] to verify that they are currently not abusing any substances. [¶] The risk level to the child continues to be high due to the child's age and the Department's inability to verify mother and father's home and their stability. Hence, the Department recommends that the matter be adjudicated, the child to remain suitable placement and that an [Interstate Compact on the Placement of Children] be ordered on the home of mother and father" At the October 29, 2008 hearing, which the parents did not attend, the matter was set for a November 19, 2008 adjudication hearing.

C. November 2008

On November 10 and 12, 2008, the father tested negative for drugs and alcohol. On November 12 and 17, 2008, the mother tested negative for drugs and alcohol. In a November 18, 2008 letter, the mother's employment supervisor wrote: "[The mother] has been an employee of the Department of Neurosurgery at the [university] since October 2003. I have been her direct supervisor since that time. [¶] Throughout her career with Neurosurgery, she has maintained a very high level of interest and intensity in her work. She has the great ability to solve problems and manage multiple tasks simultaneously. She currently assists the Chairman of the Department of Neurosurgery clinically and the office relies on her heavily in this position. [The mother] always performs in an exemplary fashion and has the highest amount of integrity. I feel that she is a very valuable member of our office staff. She is a very dependable employee and assists others often when they have not asked. [¶] Personally, [the mother] is very likeable and gets along well with all of her co-workers and is considered our mentor." The matter was before the juvenile court for an adjudication hearing on November 19,

2008. The parents were present. The matter was continued to December 19, 2008, pending further investigation by the department, and a request for courtesy supervision in Utah.

D. December 2008

On December 3, 2008, Mr. Portillo, the department investigator, filed the following report: “On [November 19, 2008], [department social worker] Marla Aceves interviewed mother and father Mother reported that she has been actively working her [Alcoholics Anonymous] steps for the past 4 years. Mother’s [Alcoholics Anonymous] [s]ponsor is [S.S.] Additionally, mother recently restarted her [Alcoholics Anonymous] program and is attending meetings 3 to 4 days a week. Further, mother stated that she has been frequenting the same psychiatrist for the past 4 years, where she is receiving therapeutic services and she is learning coping skills. Mother added that she has no current therapist. Mother has been employed as an Administrator Assistant at the [university] Neurologist Department for the past 6 years and works from Monday to Friday, 8:00 am to 5 pm. [¶] According to father, he also again started his [Alcoholics Anonymous] program and attends 5 to 7 . . . meetings a week and continues to seek the assistance from his [sponsor] Further, father has been participating in therapy for the past 8 years and has recently begun his psychiatric treatment with his new psychiatrist, [M.S.] Additionally, father attends a vocational rehabilitation program from the Division of Work Services. Father added that he no longer feels the need to sleep all day and has more of a desire to be a better father. [¶] Further, the Court is referred to the attached urinalysis reports for mother and father [showing negative results]. [¶] Unfortunately, there was no significant new information during the recent interview that would justify a change in recommendation. There are numerous risk factors present, including the child’s young age, and without any appropriate supervision the Department cannot even consider any change in recommendation, such as home of parents. Mother and father have a long history of substance abuse and severe mental and emotional

problems and even while under the care and supervision of service providers, mother and father relapsed. Additionally of concern is father's mental stability. On [December 1, 2008], father left a message for this investigator at 8:06 am. Subsequently at 12:20 pm father again left a message, however, on the latter message father stated that he had left a prior message the other day. On [December 2, 2008], this investigator had a telephone conversation with father and when questioned as to why he had stated that the message was left on a different day and not earlier that day, father stated that it was this investigator's 5 minute phone message that caused him to become confused of when he had left the message. Father was upset over the phone message and stated that such long message caused him to forget what he was going to say. Further, during the conversation father was easily confused and when this investigator would answer a question he would make odd comments such as 'Oh he doesn't want to tell you.' Father also stated that there will always be a risk of mother and father relapsing because of their 'disease' and there is no concrete guarantee that the child would not be abused or 'killed.' Therefore, given mother and father's traumatic history, it is probable that the family will require supervision for an extended amount of time. [¶] Hence the Department continues to recommend that the matter be adjudicated, the child to be declared a dependent of the Court and that an [Interstate Compact on the Placement of Children] be ordered on the home of mother and father."

The parents appeared at the December 19, 2008 hearing. The matter was tried on the department's reports. No witnesses were called to testify. The juvenile court found by a preponderance of the evidence that count (b)(2) of the petition was true as amended: "The child[']s] father . . . has a history of substance abuse that led to the father abusing prescription medication for a period of less than two weeks in July 2008, which limited his ability to provide regular care for the child and places the child at risk of harm." The remaining counts were dismissed with prejudice. The juvenile court ordered the child released to his parents, provided he remain in California. Additionally, the juvenile court ordered the department to initiate an expedited interstate compact request with the Utah authorities. The nonoffending mother submitted to the juvenile court's jurisdiction. The

department was ordered to provide family maintenance services to both parents. The juvenile court ordered the parents to participate in parenting classes, to continue in substance abuse programs, and mental health treatment. The father was ordered to submit to random drug and alcohol testing.

III. DISCUSSION

The father contends: there was insufficient evidence to support the jurisdictional finding under section 300, subdivision (b); there was no evidence of any specific harm caused by his history of substance abuse; and the child was not substantially harmed or at risk of injury due to the abuse of prescription medication for a period of less than two weeks in July 2008.

Section 300, subdivision (b) provides for juvenile court jurisdiction when: “The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.” (See *In re J. K.* (2009) 174 Cal.App.4th 1426, 1439-1440; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820 & fn. 4.) The Court of Appeal has held: “When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of

solid value to support the conclusion of the trier of fact. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. (*In re Steve W.* (1990) 217 Cal.App.3d 10, 16.)” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

The Court of Appeal has further held: “The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child who is the subject of a petition comes under the juvenile court’s jurisdiction. . . . On review, this court will view the juvenile court record in the light most favorable to that court’s order. . . . We may not reweigh or express an independent judgment on the evidence, but must decide only whether sufficient evidence supports the findings of the juvenile court. . . . Issues of fact and credibility are matters for the trial court alone; we may decide only ““whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.’ . . .”” (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860, citations omitted.)” (*In re Shelly J.* (1998) 68 Cal.App.4th 322, 329; accord, *In re Angelia P.* (1981) 28 Cal.3d 908, 924 [“the [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence”]; see also *In re Laura F.* (1983) 33 Cal.3d 826, 833 [“our task is not to reweigh the evidence or to express an independent judgment thereon”].)

Substantial evidence supported the juvenile court’s jurisdiction finding. In April 2008, the four-month-old child was living in a home with no food or diapers. The mother was working full-time. The father, who had a history of depression and substance abuse, was in need of electroconvulsive therapy. The father was unable to care for the child. The parents were financially unable to provide daycare. In June 2008, when the six-month-old child first came to stay with his paternal aunts, he was listless and had circles under his eyes. One month later, when the parents came to California, the father appeared to be overly medicated, abusing prescription medications, and behaving irrationally. In July 2008, the parents returned with their children to their home. But the

father was behaving erratically and the mother removed the children from the home for a few days. The father underwent an emergency hospitalization and detoxification. As noted, when the child once again returned to California, a week later, a paternal aunt stated, “[He] looked stressed out, his eyes were wide and they were going back and forth.” He was seven months old at that time. He was diagnosed as possibly a failure to thrive baby. Although both parents were obtaining regular treatment for their depression and substance abuse, they both suffered a relapse in July 2008. Further, there was some question about the father’s stability; in December 2008, he stated that given the parents’ disease, there was no absolute guarantee the child would not be abused or even killed. This was substantial evidence from which the juvenile court reasonably could conclude that if the child was returned to his parents’ unsupervised custody, he would be at a substantial risk of harm.

IV. DISPOSITION

The December 19, 2008 jurisdiction and disposition order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.